

VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Eric F. Pastor
Pastor, Behling & Wheeler, LLC
2201 Double Creek Drive, Suite 4004
Round Rock, TX 78664

Re: Gulfco Marine Maintenance Superfund Site, Freeport, Texas
Amended Unilateral Administrative Order, CERCLA Docket No. 06-05-05A
Final Screening Level Ecological Risk Assessment Report

Dear Mr. Pastor:

By this letter, the United States Environmental Protection Agency (EPA) is notifying Respondents of non-compliance with the Amended Unilateral Administrative Order (UAO) for Remedial Investigation and Feasibility Study (RI/FS), CERCLA Docket No. 06-05-05A, for the Gulfco Marine Maintenance Superfund Site located at 906 Marlin Avenue in Freeport, Brazoria County, Texas (Gulfco Site). The due date for the submittal of the Final Screening Level Ecological Risk Assessment (SLERA) Report was December 22, 2009. The submitted Final Screening Level Ecological Risk Assessment Report submitted on December 22, 2009 is deficient in addressing EPA's comments outlined in EPA's December 4, 2009 comment letter as required by Task VII: Risk Assessment Paragraph 37(d)(x) of the Statement of Work for the Amended UAO for RI/FS.

The EPA would like to stress that your conduct constitutes a violation of the Amended UAO for RI/FS and that Respondents must take immediate actions to ensure compliance with the terms of the Amended UAO. The EPA is enclosing a list of deficiencies that must be corrected and then incorporated into the Final SLERA Report. The corrections must be made and submitted to EPA **within fourteen (14) days** in order for Respondents to come into compliance with the Amended UAO. If the deficiencies are not corrected, EPA may determine that your failure to perform the required activities constitutes a continuing event of non-compliance and may subject Respondents to the assessment of civil penalties, pursuant to Section 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), of \$37,500 for each day that such failure to comply continues since the December 22, 2009 due date.

In addition, the submitted Final SLERA Report submitted by Respondents did not incorporate EPA's comments that additional deliverables, Steps 3-8 of the Baseline Ecological Risk Assessment (BERA) process for the Gulfco Site need to be performed as part of the overall Ecological Risk Assessment Report including Step 3- Baseline Risk Assessment Problem Formulation, Step 4- Study Design and Data Quality Objectives, and submittal of a ecological risk assessment work plan included with the RI/FS

Sampling and Analysis Plan, Step 5- Field Verification and Sampling Design, Step 6- Site Investigation and Analysis of Exposure and Effects, Step 7- Risk Characterization and submittal of the BERA Report, and Step 8- Risk Management. Steps 3-8 of the BERA serves to identify exposure pathways and preliminary contaminants of concern for the BERA by eliminating those contaminants and exposure pathways that pose negligible risks. The Amended UAO requires submittal of the Draft BERA Report on Monday, February 22, 2010. Due to Respondents stated silence as to completing the Steps 3-8 of the BERA as required by EPA under the Amended UAO, EPA will give Respondents **five (5) business days** to inform EPA whether they intend to complete a BERA. If EPA has not heard from Respondents in five business days or Respondents refuse to perform a BERA as required by the Amended UAO, EPA will take over that portion of the Remedial Investigation work required under the Amended UAO and complete the work as well as possibly pursue civil penalties for noncompliance with the Amended UAO for RI/FS.

I encourage Respondents to review EPA's attached listed deficiencies, correct those deficiencies, incorporate the corrections in the Final SLERA Report, and submit the corrected Final SLERA Report to EPA within 14 days. If you have any questions concerning this matter, please contact me at (214) 665-8318.

Sincerely yours,

Gary Miller, P.E.
Remedial Project Manager

Enclosure

cc: Luda Voskov (TCEQ)
Susan Roddy
Barbara Nann

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Updated Screening Level Ecological Risk Assessment, dated December 22, 2009,
EPA Comments